

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

Plaintiff,

v.

ZYNGA INC.,

Defendant.

C.A. No. 22-590-GBW

**FILED UNDER SEAL**

**DECLARATION OF BROOKS J. KENYON IN SUPPORT OF  
DEFENDANT’S MOTION TO STRIKE CERTAIN OPINIONS FROM THE  
EXPERT REPORT OF MR. CHRISTOPHER THOMPSON**

I, Brooks J. Kenyon, declare as follows:

1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel of record to Defendant Zynga Inc. (“Defendant” or “Zynga”) in the above-captioned matter. I am admitted *pro hac vice* to this Court. I submit this declaration based on personal knowledge, unless otherwise noted. If called, I can and will testify competently to the matters set forth herein.

2. I make this declaration in support of Defendant’s motion to strike (“Motion”) certain opinions from the Opening Expert Report of Mr. Christopher Thompson, served by Plaintiff International Business Machines Corp. (“IBM”).

3. Attached as **Exhibit 1** is a true and correct copy of excerpts from the Opening Expert Report of Mr. Christopher Thompson, dated February 2, 2024.

4. Attached as **Exhibit 2** is a true and correct copy of IBM’s Preliminary Identification of Accused Products, dated September 21, 2022.

5. Attached as **Exhibit 3** is a true and correct copy of IBM’s cover pleading to its Initial Infringement Contentions, dated February 28, 2023

6. Attached as **Exhibit 4** is a true and correct copy of IBM's cover pleading to its Final Infringement Contentions, dated November 13, 2023.

7. Attached as **Exhibit 5** is a true and correct copy of email correspondence between counsel for IBM and counsel for Zynga regarding IBM's opening expert reports.

8. Attached as **Exhibit 6** is a true and correct copy of excerpts from IBM's Supplemental Infringement Contentions Claim Chart, Exhibit A (Supplemental) regarding the '849 Patent, served August 31, 2023.

9. Attached as **Exhibit 7** is a true and correct copy of excerpts from IBM's Final Infringement Contentions Claim Chart, Exhibit A-1, Pt. 1 (of 3) regarding the '849 Patent, served November 13, 2023.

10. Attached as **Exhibit 8** is a true and correct copy of excerpts from IBM's Final Infringement Contentions Claim Chart, Exhibit A-2, Pt. 1 (of 2) regarding the '849 Patent, served November 13, 2023.

11. Attached as **Exhibit 9** is a true and correct copy of excerpts from the deposition of Mr. Benjamin Lemer, dated January 9, 2024.

12. Attached as **Exhibit 10** is a true and correct copy of excerpts from deposition of Mr. Andrew Ice, dated December 20, 2023.

13. Attached as **Exhibit 11** is a true and correct copy of IBM's letter brief in support of a motion to strike (D.I. 397), dated July 26, 2023, in the matter of *Int'l Bus. Machs. Corp. v. Rakuten, Inc.*, No. 21-461-GBW (D. Del.).

14. **Exhibit 12** is a true and correct copy of the Opening Expert Report of Mr. Christopher Thompson, dated February 2, 2024, and all exhibits thereto. Due to size the Opening Expert Report and its Exhibits are submitted separately on USB drive.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: February 20, 2024

/s/ Brooks J. Kenyon  
Brooks J. Kenyon